IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 204 of 2004(S/S)

1. Anup Kumar Kandwal
   S/o Sri Nand Kishore Kandwal
   R/o Tehsil Colony Karn Prayag
   District Chamoli.
2. Vikram Singh Negi
   S/o Sri Govind Singh Negi
   R/o Village and Post Office Deval Dhar
   District Chamoli ……petitioners

Versus

1. District Magistrate, Chamoli.
2. Sub Division Magistrate
   Tehsil Karn Prayag.
3. Sub Divisional Magistrate
   Tehsil Roorkee.
4. Chirnjee Lal S/o Koshu Lal
   R/o Village Naurak, Patwari,
   Circle Kaudiya, Tehsil and
   District Chamoli …….Respondents.

Shri Tumul Nailwal instructed by Shir S.N. Babulkar, learned Counsel for the Petitioners.
Shir Paresh Tripathi, brief holder for the State.

Dated of decision: 19, March, 2005

For the approval of:

Hon'ble Mr. Justice Prafulla C. Pant.

- Whether the order/judgment should be sent to the Reporters for reporting? (Yes)
- Whether the reporters be allowed to see the judgment? (Yes)

Reserved

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Hon'ble Prafulla C.Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, petitioners have sought mandamus commanding the respondents no. 1 to 3 to regularize their services against the post of drivers.

2. Brief facts of the case as narrated in the writ petition are that the petitioners are working as jeep drivers in Tehsil- Karn Prayag and Pokhri in the District Chamoli. Petitioner no. 1 was appointed as jeep driver on 08.05.1999. However, after two months respondents stopped paying salary to the petitioner no. 1 but continued to take work from him. If is alleged that he was assured to be paid the arrears of salary after his services are regularized. Petitioner no. 2 was also appointed as jeep driver on temporary basis w.e.f. 08.06.1999 in the pay scale of Rs. 3050-4590. His salary too was stopped after two months and he was also assured that arrears of salary will be paid after his services are regularized. It is alleged in the writ petition that there are 6 vacancies of drivers available in the tehsils and Collectorate of Chamoli. It is further alleged that the petitioners are qualified as well as have sufficient experience for their appointment on said posts. The petitioners alleged that instead of regularizing their services, the District Magistrate appointed respondent no. 4 Shri Chirnjee Lal as driver. However, vide order dated 23.07.2002, petitioners were ordered to be engaged on daily wages on payment of Rs. 58 per day while earlier they were drawing salary of Rs. 3050-4590. On 22.11.2003, ignoring the services of the petitioners, the respondents advertised 5 temporary posts of drivers to deprive the petitioners their regularization. Though the petitioners also applied for the appointment against said advertised posts but interview which was scheduled to be held on 20th and 21st of February, 2004, was postponed without assigning any reason. Alleging that the petitioners

are being deprived of their regularization as drivers, the present writ petition has been filed by them.

3. In the counter affidavit which has been filed on behalf of respondent no. 1 to 4, it has been stated that petitioner no. 1 was appointed as driver only for 35 days and the petitioner no. 2 was appointed as driver only for 89 days. Thereafter their services stood terminated as their services were required only during the yatra season in the district. It is further stated in the counter affidavit that respondent no. 4 i.e. Sri Chiranjee Lal was appointed under Uttaranchal Government Department Drivers Service Rules, 2003 as he belongs to Schedule Caste category. However, it is admitted that petitioners were engaged on daily wages on contract basis on Rs. 58 per day w.e.f. 23.07.2002. This appointment being contractual, provides no claim to the petitioners. It is also not disputed by the respondents that vacant posts of drivers were advertised and the selection process got held up. But the reason has not been mentioned in the counter affidavit.

4. I heard learned counsel for the parties and perused the record.

5. The short question for consideration before this Court is whether the petitioners nos. 1 and 2 are entitled to be regularized as drivers w.e.f. 08.05.1999 and 08.06.1999 respectively, and also that if they have been wrongly been deprived of regularization in the service.

6. Before further discussions, it is necessary to see how the petitioners were appointed or engaged as drivers. Annexure-1 to the writ petition shows that one Shri Nand Kishore, jeep driver had proceeded on Earned Leave w.e.f. 10.05.1999 to 13.06.1999 (for 35 days) and petitioner no. 1 Shri Anup Kumar Kandwal was given leave vacancy appointment in his place for said period. Annexure-1 filed with the writ petition itself shows that in said appointment order, it is categorically mentioned that on joining of his duties by Nand Kishore, jeep driver, services of the petitioner would automatically come to an end.

7. however, Annexure-2 to the writ petition shows that Shri Vikram Singh (petitioner no. 2) was appointed as jeep driver on temporary basis in the pay scale of Rs. 3050-4590 as due to the vacancies on the post of drivers work is suffering during yatra season. In this appointment letter (Annexure-2 to the writ petition) though it is mentioned that the services are temporary but it is not mentioned if the petitioner no. 2 was appointed for any fixed period. Merely from the statement that work is suffering during yatra season there due to vacancies on the posts of jeep drivers as mentioned in said appointment letter, it cannot be gathered if his services were only for 89 days as stated in the counter affidavit. Therefore, there is material difference between the appointment/engagement of petitioner no. 1 as against appointment/ engagement of petitioner no. 2. Since the petitioner no. 2 was appointed as driver under a written order without indicating when his services would be terminated, there is nothing on the record from either side,

if his services were ever terminated by passing any written order. Therefore, as far as the petitioner no. 2 is concerned engaging him arbitrarily on daily wage for 3 months at the rate of Rs. 58 per day w.e.f. vide order dated 23.07.2002 cannot be said to be lawful order. However, same cannot be said for driver Anup Kumar (petitioner no. 1) who was also engaged on daily wages by the same order dated 23.07.2002 (Annexure-5 to the writ petition) as his services stood terminated after 35 days as mentioned in his appointment letter (Annexure-1 to the writ petition) for the reason that he was a leave vacancy appointee for said period. As such the status in law of the petitioner no. 1 is now that of a driver on daily wage while the petitioner no. 2 continues to remain a appointed temporary driver who appears to have been made to work on daily wages under compulsion under the aforesaid order dated 23.07.2002. In the counter affidavit though it is alleged that the appointment of the petitioners were contractual but this is not established on record particularly regarding the petitioner no. 2.

8. Copy of the advertisement dated 22.11.2003, which is Annexure-6 to the writ petition shows that there was as many as 5 vacancies of drivers in district Chamoli in the pay scale of Rs. 3050-4590. This is not disputed that the petitioners also applied for said posts for getting their services regularized. Para 9 of the counter affidavit shows that the selection process could not take place due to unavoidable circumstances and was stayed till further orders. But the respondents have not disclosed under whose

directions and on what ground the selection process got held up.

9. Shri S.N. Babulkar, Senior Advocate for the petitioners drew my attention to Annexure-3 to writ petition which is copy of the letter dated 17.04.2002 whereby on behalf of the District Magistrate, petitioner no. 1 was informed that since there was ban in the direct recruitment as such his case for regular appointment would be considered on preferential basis after the recruitment process starts. On its basis, learned Counsel for the petitioners questioned the appointment of the respondent no. 4. However, in view of the statement made in the counter affidavit that respondent no. 4 being a member of the scheduled caste was appointed as per the rules as such the petitioner cannot claim parity with him, which statement, in the opinion of this Court, appears to be reasonable and said appointment stands lawfully explained. As such on account of appointment of respondent no. 4 as jeep driver, it cannot be said if the right of the petitioner no. 1 is interfered with. However, it can certainly be said that his case also deserves to be considered in the recruitment process, which appears to have been held up for the reason best known to the respondents. So far as the petitioner no. 2 is concerned, he stands continued on the post of jeep driver in the pay scale of Rs. 3050-4590 as per his appointment letter as his services were never terminated by any order nor there is anything on record to show if he was appointed only for 89 days.

10. For the reasons as discussed above, this Court is of the view that petitioner no. 2, Sri Vikram Singh has wrongly been deprived of his pay scale of Rs. 3050-4590 by showing him to be engaged arbitrarily, on daily wage vide order dated 23.07.2002. Said order (Annexure-5 to the writ petition) to the extent it pertains to Vikram Singh is illegal and cannot deprive the petitioner no. 2 his pay scale to which he was entitled as per the appointment letter. As such the writ petition is allowed in favour of petitioner no. 2 for payment of salary of a regular driver w. e. f. 08.06.1999 minus the amount already paid to him. However, the writ petition is disposed of as regards to the petitioner no. 1 with the observation that he is already a candidate against the vacant posts of drivers, advertised on 22.11.2003 with regard to which the respondents are directed to complete the selection process if there is no legal impediment, within a period of three months from today. No order as to costs.

(Prafulla C.Pant, J.)

Dt: March 19, 2005
Sweta